or decree made for the occasion. The design of the convention was to exclude arbitrary power from every branch of the government; and there would be no exclusion of it, if such rescripts or decrees were allowed to take effect in the form of a statute." Gibson, C. J., in *Norman* v. *Heist*, 5 Watts & Serg. at p. 173. The holders of obligations payable in money of a specified kind may rely with tolerable certainty upon the protection of the United States Constitution, whatever may be the will of Congress.

CITATION OF AMERICAN CASES IN ENGLAND. — The part which American decisions ordinarily play in the English courts is so insignificant that it is surprising to find one of them actually mentioned in the head-note of an English case. The reporter's syllabus of *Kennedy* v. *Trafford*, [1896] 1 Ch. 763, contains these words: "*Van Horne* v. *Fonda*, 5 Johns. Ch. [N. Y.] 388, not followed." And the opinions of the judges show that the case figured prominently in the discussion. The incident called forth a spirited editorial in the Solicitors' Journal of June 13th, in which the writer protested strongly against allowing "English principle to be stifled by foreign competition," and quoted Lord Halsbury's remarks in *Re Missouri Steamship Co.*, 42 Ch. D. 321, 330: "We should treat with great respect the opinion of eminent American lawyers on points which arise before us, but the practice, which seems to be increasing, of quoting American decisions as authorities, in the same way as if they were decisions in our own courts, is wrong." Of course indiscriminate indulgence in the practice deplored by the learned Chancellor might well be frowned on by the English Bench. But Lord Halsbury certainly did not have in mind such an instance as this. *Van Horne* v. *Fonda* is the starting point of a peculiar and well established American doctrine. An English court, called upon for the first time to decide a point involving that doctrine, would hardly be performing its duty adequately if it ignored the leading American case.

A NEW PHASE OF THE RIGHT TO PRIVACY. — When a right is as vague and undefined as the right to privacy, to consider novel actions brought, as showing tendencies and possibilities in its development, has as much a place in current discussion as to comment on the actual decisions of the highest courts. The bringing of such a suit based on the right to privacy is noticed in 30 American Law Review, 582. A mother took her infant to a hospital, where it was operated upon in her presence before medical students. The suit is brought for the child by its next friend against the surgeon, who performed the operation. Two grounds are stated as infringements of its right to privacy, first, the publicity of the operation, and, secondly, the publication of a pamphlet containing a scientific account of the operation and illustrated by photographs taken for the purpose. Fictitious initials were used to conceal the child's identity.

Without going into the question of consent in this case, the important point is whether on such facts the right to privacy has been infringed at all. The difficulty to be met by the trial judge is at once apparent, when it is considered that no definition of this right has been given that can aid him, nor does any seem possible as yet. Its extent must be determined as cases come up by a process of elimination rather than definition. See Messrs. Warren and Brandeis' article, 4 HARVARD LAW REVIEW, 194.

The simplest way would seem to be to employ a process of elimination in the charge to the jury. Let the judge start with a clear case of liability, and work toward a clear case in which there is no liability, in such a manner as to bear on the facts of the question before the jury. In this way could be obtained the elasticity considered in the article referred to as essential in any rule of liability. To start with a clear case, then, suppose the persons brought in by the surgeons were prompted to come by idle curiosity merely. Can the line be drawn between that case and one where the on-lookers are medical students? Desirable as it is to do so, what is the difference between the two acts that warrants the distinction? Under the influence of the modern scientific spirit a fundamental difference is felt, which makes one act seem wanton, while the other can only be regarded with approval. In the latter case there can be no *injuria* if the law is to protect right-minded persons in their right to privacy without encouraging squeamish plaintiffs. This is not to assert a right to study a person's case, however interesting, against his will, express or implied. It is merely to say that one who is rightfully taken into the operating room of a hospital is not to be presumed to object to that which is regularly done there.

As to the second ground on which the action is based, it is a truism to say that unless the patient's identity is in some way connected with the published description there is no infringement of the right to privacy. It is the same question that arises in the law of libel.

RIGHT OF A BENEFICIARY TO SUE ON A CONTRACT. — LAWRENCE *v.* FOX AGAIN. — The anomalous doctrine that "whenever one makes a promise to another for the benefit of a third person, the latter may maintain an action at law upon such a promise," has received another severe blow in New York; *Lawrence* v. *Fox*, 20 N. Y. 268, the weightiest authority to be found in its favor, has been again distinguished, and sharply restricted. In *Buchanan* v. *Tilden*, 39 N. Y. Supp. 228, the defendant had agreed with the plaintiff's husband, in consideration of valuable services rendered to defendant in a lawsuit, that if the defendant should win the suit he would pay to the wife fifty thousand dollars. The defendant won his suit, and the wife brought this action on the contract in her own name. The court refused to allow her to recover, and distinguished *Lawrence* v. *Fox*, quoting from the opinion in *Vrooman* v. *Turner*, 69 N. Y. 284, to this effect: "The courts are not inclined to extend the case of *Lawrence* v. *Fox* to cases not clearly within the principle of that decision. Judges have differed as to the principle on which *Lawrence* v. *Fox* and kindred cases rest, but in every case in which an action has been sustained there has been a debt or duty owing by the promisee to the party claiming to sue upon the promise." The opinion subsequently proceeds: "This and similar cases that might be cited, in which *Lawrence* v. *Fox* has been distinguished, will show that that case has been sharply criticised and its scope materially limited, and that the tendency of the decisions is to adhere to the rule of the common law that one cannot acquire rights under a contract to which he is not a party." The court then holds that, while the husband was bound to support his wife, he was not bound to make her a present of fifty thousand dollars, and therefore the case need not follow *Lawrence* v. *Fox*.

The idea that some other person than the promisee can maintain an